

Advance Medical Directives and Medical Powers of Attorney

If you are concerned about how you will be cared for in the event of terminal illness or incapacitation, you should consider creating an advance medical directive and a medical power of attorney. Many individuals use these legal documents to express preferences for their health care. Advance medical directives, which are commonly referred to as Living Wills, allow you to inform doctors and family members about the treatment you wish to receive if you become incapacitated, as well as to express a desire to donate your organs or tissue for medical purposes upon your death. Creating an advance medical directive enables you to ensure that your medical preferences will be carried out, even if you are unable to state those preferences when the time comes. Without documents expressing these desires, your family may be forced to seek a court order to deal with your medical situation, or they may be unable to fulfill your wishes altogether. A medical care power of attorney, on the other hand, is a document in which you appoint an agent to make health care decisions on your behalf when you are incapacitated. Both documents are discussed in greater detail below.

Living Wills

Under the Patient Self-Determination Act of 1990, every adult in the United States has a legal right to refuse unwanted medical treatment. A living will allows you to express this right by deciding whether or not you wish to receive “life-sustaining treatment” if you become terminally ill or permanently unconscious. Life-sustaining treatment includes heart-lung machines, ventilators, intravenous devices (tube-feeding), and any other medical machinery or techniques that could prolong your life, while not improving your condition. In your living will, you could specify which treatments or procedures you would like to receive, and which you would want to forego. For example, you could express a desire to receive treatments that alleviate pain or discomfort, while rejecting cardiopulmonary resuscitation (CPR) or feeding tubes that would sustain your life in the event that you become permanently unconscious.

Q. When does my living will take effect?

- A. Generally, it takes effect when the following situation occurs:
- You are diagnosed as close to death from a terminal condition, or as permanently comatose; and
 - You cannot communicate your wishes for medical care (orally or written).

Q. Who determines whether I have become permanently unconscious?

- A. Determinations regarding your medical condition will be made by your attending physician and at least one other medical doctor, after conducting an examination and reviewing your situation. Doctors cannot immediately determine whether your severely impaired state is permanent. It is usually reasonable to observe a patient for two weeks, knowing that someone who does not wake up after this period is more likely to remain comatose.

Q. What if I don't have a living will?

- A. Your doctors will use their discretion in deciding upon your medical care. They may consult your spouse, adult children, or other close relatives. This could lead to problems

if family members disagree about the proper treatment. Courts may then need to step in and decide.

Organ and Tissue Donation

In addition to planning your health care in the event of your incapacitation, you may also want to think about your wishes for your body after you die. For instance, you may choose to become an organ or tissue donor. Organs and tissue from the recently deceased are needed every day to save the lives of individuals suffering from a variety of illnesses and injuries. In fact, it is estimated that approximately 15 people die in America each day, while waiting for an organ that could save their lives. Medical technology currently allows physicians to transplant many organs, including kidneys, hearts, livers, lungs, pancreases, intestines, and corneas, as well as skin, bones, and bone-marrow. Many States allow you to express your desire to become an organ or tissue donor in your advance medical directive, or on your driver's license. Your legal assistance attorney can help you take the necessary steps to indicate this desire.

Q. Am I qualified to be a donor?

A. Everyone may be a potential donor, regardless of age or medical history. When it comes time to donate, transplant surgeons will make a final determination as to which organs and tissue are acceptable.

Q. If I designate myself as a donor, will doctors still make every effort to save my life in the case of an accident or illness?

A. Absolutely. Organ and tissue donation is only considered *after* all efforts have been made to save a person's life. In addition, transplant physicians are not involved in certifying a patient's death.

Q. Can I specify which organs/tissue I want to donate?

A. Yes. You can choose which organs or tissue you would like to donate.

Q. Will my family have to pay the cost of donation?

A. No. All costs associated with organ donation are paid by the organ/tissue procurement agency making the arrangements.

Medical Care Power of Attorney (Health Care Proxy)

This document is similar to other types of **powers of attorney**, in that you are selecting an agent who can make decisions on your behalf. However, rather than authorizing someone to look after your financial affairs, this document allows you to authorize an agent to make health care decisions for you if you become incapacitated. If you are either unconscious or in a mental state lacking legal capacity to make your own decisions, your agent will have the power to decide whether you should be placed in a nursing home, whether you should undergo a surgery, or even whether you wish to receive life-sustaining treatment. Medical care powers of attorney are important because they provide your agent with authority to address medical situations that you did not specifically address in your living will. Given the near impossibility of addressing every

health care situation in a single document, granting a medical power of attorney to your trusted relative or friend is probably the best way to ensure that your wishes will be respected regardless of the circumstance. In determining how you want your agent to act, you should try to discuss various medical situations that might arise and what he or she should do in each one. As with your living will, you should keep your medical care power of attorney in your medical record. Should you change your mind after creating a medical power of attorney, you must destroy the old document and create a new one.